



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Rulemaking for Adoption of a General
Order and Procedures to Implement the
Digital Infrastructure and Video
Competition Act of 2006.

R. 06-10-005
(Filed October 5, 2006)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE SCOPING MEMO FOR PHASE II**

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I. INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3(d) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the schedule set forth in the Scoping Memo for Phase II and Request for Comments issued May 7, 2007 (Scoping Memo), the Division of Ratepayer Advocates (DRA) submits these Opening Comments. DRA's comments address two issues: (1) safe harbor standards for state video franchise holders that have fewer than one million California telephone customers (small franchisees); and (2) broadband and video access information. Silence on any particular issue does not represent agreement or disagreement with the arguments associated with that issue.

II. DISCUSSION

A. Build-Out Requirements for State Video Franchise Holders With Less Than One Million California Telephone Customers

The Scoping Memo requests comments on the Digital Infrastructure and Video Competition Act of 2006's (DIVCA) build-out requirements for state video franchise holders that have fewer than one million California telephone customers.¹ The Scoping Memo invites parties to comment on two possible build-out compliance mechanisms for these small franchisees: (1) additional "safe harbor" standards; and (2) an alternative - a reasonable determination that would be case-specific for franchisees that are unable to meet the safe harbor standards as set forth in Public Utilities Code (PU) § 5890(c).² In these comments, DRA proposes safe harbor standards that the Commission should adopt for franchisees with less than one million telephone customers. The alternative, case-specific, mechanism will be addressed by DRA in its reply comments.

The opening section of PU Code § 5890 of DIVCA lays out the broad intent of the Legislature to prevent socioeconomic discrimination in the build-out of video services as follows:

¹ Scoping Memo, pp. 2-4.

² *Id.*

a) A cable operator or video service provider that has been granted a state franchise under this division may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides.³

In light of this DIVCA anti-discrimination statutory provision for build-out, DRA proposes that the Commission establish low-income benchmarks for state video franchise holders that have fewer than one million California telephone customers that are similar to the benchmarks established in § 5890(b) for franchise holders with greater than one million telephone customers. Section 5890(b) requires:

(b) Holders or their affiliates with more than 1,000,000 telephone customers in California satisfy subdivision (a) if all of the following conditions are met:

(1) Within three years after it begins providing video service under this division, at least 25 percent of households with access to the holder's video service are low-income households.

(2) Within five years after it begins providing video service under this division and continuing thereafter, at least 30 percent of the households with access to the holder's video service are low-income households.⁴

Consistent with these benchmarks, DRA proposes that the small franchisees be required to meet the same percentage low-income benchmarks in the same test years as cited above in order to comply with the anti-discrimination statutory provision of § 5890(a). Given that § 5890(a) makes no distinction between state video franchise holders based on the number of telephone customers, DRA sees no compelling reason why the Commission should establish different low-income benchmarks for franchisees with less than one million telephone customers than for those with more than one million telephone customers. The Commission should simply apply the same standards.

³ PU Code § 5890(a)

⁴ PU Code § 5890(b)

However, if a small franchisee proves, through its annual reports on video service offered, that it is unable to meet the low-income benchmarks because the total number of low-income households in the franchisee's telephone service area is less than 25% and 30% of households with access to the franchisee's video service, DRA proposes a narrowly-tailored safe harbor provision. In such circumstances, DRA proposes that the calculation of 25% and 30% low-income benchmarks be based on the total number of *low-income households* with access to the franchisee's video service rather than the total number of *all households* with access. This calculation method would allow small franchisees to meet a low-income benchmark that is more realistic, if the franchisee can prove that their telephone service area does not have a large enough low income population.

B. Broadband and Video Access Information

The Scoping Memo asks whether the broadband and video access information currently being collected by the Commission under DIVCA is adequate or deficient.⁵ While the current requirements provide the Commission with useful broadband and video access information, the Commission should collect additional data for video service. DRA has presented its monitoring report proposals in the URF proceeding, and hereby incorporates the portions of those proposals which are relevant to video and broadband service providers herein.⁶ Specifically, the data collection should be expanded to include: (1) cable and video subscribership information by census tract; and (2) service pricing by market and/or census tract. General Order (GO) 169 currently requires state video franchise holders to provide subscribership information for both wireline and non-wireline broadband service, but no similar requirement exists for video service. For broadband service, the following subscribership reporting is required under GO 169:

⁵ Scoping Memo, p. 5.

⁶ See DRA's Proposal for New and Reinstated Monitoring Reports, Appendix A, February 7, 2007, R. 05-04-005 (Phase 2).

C. Annual Reports on Broadband and Video Services

(1) Wireline Broadband Information:

(b) The number of Households in each Census Tract that subscribe to wireline Broadband that the State Video Franchise Holder and/or any of its affiliates makes available in this state.

(2) Non-Wireline Broadband Information

(c) A State Video Franchise Holder shall report upon the number of Households in each Census Tract that subscribe to non-wireline Broadband that the State Video Franchise Holder and/or any of its Affiliates makes available in this state.⁷

The Legislative intent of DIVCA is to (i) promote widespread access to technologically advanced cable and video services, and (ii) complement efforts to increase investment in broadband infrastructure and close the digital divide.⁸ With the additional data of subscribership and pricing information for video service, the Commission has an additional metric to monitor build-outs and service area accessibility. This data would also allow the Commission to identify and analyze any barriers in both the provision of video services and to increasing subscribership levels.

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⁷ GO 169, pp. 16-17.

⁸ PU Code 5810(a)(2).

III. CONCLUSION

For the foregoing reasons, the Commission should adopt DRA's proposed safe harbor standards for state video holders with fewer than one million telephone customers and require holders to provide subscribership and pricing information for video service.

Respectfully submitted,

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May 31, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE SCOPING MEMO FOR PHASE II**” in **R.06-10-005** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

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Executed on May 31, 2007 at San Francisco, California.

/s/ Imelda C. Eusebio
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N O T I C E

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